

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JESSEY F REED,

Petitioner,

10

PATRICK GLEBE.

Respondent.

CASE NO. C15-5063 RBL-JRC

REPORT AND RECOMMENDATION

NOTED FOR:
MARCH 27, 2015

The District Court has referred this petition for a writ of habeas corpus to United States Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR3 and MJR4. Petitioner filed the petition pursuant to 28 U.S.C. § 2254.

Petitioner asks that the Court grant him in forma pauperis status and waive the five dollar filing fee (Dkt. 4). The Court recommends denying petitioner's motion to proceed in forma pauperis because the financial documents petitioner places before the Court show that he can

1 afford to pay the filing fee (Dkt. 5). Petitioner provides a resident trust fund statement showing
2 average monthly deposits of over two hundred dollars (*id.*).

3 Petitioner's right to proceed in forma pauperis is not absolute. The Court of Appeals
4 reviews denials of in forma pauperis status for abuse of discretion. *Denardo v. Collum*, 48 F.3d
5 1227, 1227 (9th Cir. 1995). Further, the Ninth Circuit addressed the denial of in forma pauperis
6 status over forty years ago and held that proceeding in forma pauperis is a matter within the
7 sound discretion of the trial court in civil actions. *Weller v. Dickson*, 314 F.2d 598 (9th Cir.
8 1963). Petitioner has a stream of income that shows he could easily afford the five Dollar filing
9 fee. Accordingly, the Court recommends denial of the motion to proceed in forma pauperis.

10 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
11 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.
12 6. Failure to file objections will result in a waiver of those objections for purposes of de novo
13 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit
14 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on
15 March 27, 2015 as noted in the caption.

16 Dated this 23rd day of February, 2015.

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19 J. Richard Creatura
20 United States Magistrate Judge
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